IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

RCRev..No. 217 of 2005

RCA.NO.50/2003 OF RENT CONTROL APPELLATE AUTHORITY, PALAKKAD,
RCP. NO. 7/2002 OF RENT CONTROL COURT,CHITTUR.
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REVISION PETITIONER/APPELLANT/RESPONDENT:

H.ILLYAS, S/O.LATE MUHAMMED HANEEFA RAWTHER,
ROYAL ICE HOUSE, MAIN ROAD,
KOLLENGODE, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K,
ADV. SRI.LIJU. M.P,
ADV. SRI.M.V.BIPIN.

RESPONDENTS/RESPONDENTS/PETITIONERS:
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1. SMT.RUGMINI, W/O.SIVARAMAN,
THEKKEPAVADI, KOLLENGODE, CHITTUR TALUK,
PALAKKAD DISTRICT.

2. S.INDUMATHI, D/O.SIVARAMAN,
2ND STREET, K.P.N.COLONY,
THIRUPUR, COIMBATORE DISTRICT,
TAMIL NADU.

3. S.SUMATHI, D/O.V.SIVARAMAN,
CHAIRMAN COLONY, PALAYATHODE,
THIRUPUR, COIMBATORE DISTRICT,
TAMIL NADU.

BY ADV. SRI.BINOY VASUDEVAN.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &
T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO. 217 OF 2005

Dat4ed 16th October, 2007.

ORDER

Balakrishnan Nair, J.

The tenant is the revision petitioner. The landlords are the respondents. The Rent Control Petition was filed under Sections 11(2)(b), 11(3) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller allowed the application under Section 11(3) and dismissed the same under Sections 11 (2)(b) and 11(4)((ii). The appellate authority confirmed the findings of the Rent Controller. Hence this revision.

2. The facts of the case regarding the bona fide need are the following: The 3rd respondent is married and permanently settled at Thirupur. She is a Post-graduate in Mathematics. She wants to set up a tuition centre at Kollengode in the tenanted premises. Her husband is not having any regular employment. Now he is working as an agent of a company. So, they propose to shift to Kollengode. Her husband can continue to do the work from Kollengode. He can also help his mother-in-law, the 1st respondent herein in the agricultural operations. The 1st

respondent is having more than six acres of land. She is having a rice mill. She also runs another mill producing rice flakes. The 3rd respondent's husband can assist his mother-in-law in running those mills. Therefore, the landlords sought eviction for the bona fide need of the 3rd respondent. The tenant, who is the petitioner herein resisted the application, denying the claim of bona fide need. He also sought protection under the second proviso to Section 11(3). Feeling aggrieved by the concurrent findings of the authorities below under Section 11(3), this revision is filed.

3. The learned counsel for the petitioner submitted that the 3rd respondent while deposing as P.W.1, stated that they intend to shift their residence to Kollengode. She can start her tuition centre and her husband can continue to do the agency work, apart from assisting his mother-in-law in the agricultural operations and in running the mills. So, in their scheme of things, the establishment of the tuition centre is a minor thing. Therefore, they should have shifted by now. The claim of shifting to Kerala was made in 2002 when she was examined as P.W.1. Even now, they are continuing at Thirupur and therefore, the said conduct will disclose lack of bona fides from the part of the landlords, it is submitted. Regarding the first limb of the second proviso, the finding is in favour of the petitioner. But, on the second limb, the tenant failed to discharge his burden, it was held. The

learned counsel for the petitioner attacks the said finding also. According to him, while the tenant was in the box, he has asserted that no suitable rooms are available and that will be sufficient, as the burden in him is to negatively show that rooms are not available in the locality. In support of this submission, the learned counsel for the petitioner relied on the decision of this Court in **Sadanandan v. Kunheen** [1991(2) KLT 628]. He also submitted that the subsequent conduct of the landlords in not shifting from Thirupur to Kollengode should also be taken note of by this Court.. In support of the submission that subsequent developments can be taken note of by this Court, the learned counsel relied on the decision in **Jerry Joseph v. Selvaraj** [2002(2) KLT 129] and also the decision in **Hasmat Rai v. Raghunath Prasad** [(1981)3 SCC 103]. On the above grounds, the learned counsel for the petitioner prayed for allowing the Rent Control Revision.

4. We heard the learned counsel for the landlords also. He supported the concurrent findings of the statutory authorities and submitted that no ground has been made out, warranting interference with the same under the revisional jurisdiction of this Court. The submission of the learned counsel for the petitioner regarding the bona fide need made, relying on the conduct of the 3rd respondent, may be a plausible view on the facts. But, if the 3rd

respondent cannot open a tuition centre and find employment for herself, there is no point in shifting from Thirupur to Kollengode. The intention of her husband to assist the mother-in-law is only subsidiary. Therefore, the failure to shift during the pendency of the Rent Control Petition to Kollengode will not clinch the issue in favour of the tenant. Further, this Court can reverse the findings of fact entered by the courts below, if only those findings are rendered based on no evidence or perverse. We cannot describe the findings of the authorities below as perverse or based on no evidence, in the light of the submissions made by the learned counsel for the petitioner.

5. Regarding the second limb of the second proviso to Section 11(3), we notice that the burden is on the tenant to prove that no suitable accommodation is available in the locality. The 3rd respondent while in the box has specifically asserted that rooms are available in two shopping complexes and named those complexes also. If that be so, the mere assertion of the tenant that no rooms are available, will not be sufficient to discharge his burden. He could have taken out a commission to inspect the shopping complexes or he could have examined somebody associated with the shopping complexes, to show that rooms are not available and even if there are rooms, they are not suitable for his business. So, the finding of the

courts below regarding the second limb of the second proviso to Section 11 (3) is also a plausible view on the facts. Therefore, we find that no ground has been made out warranting interference with the judgment of the appellate authority, invoking the power under Section 20 of the Act. In the result, the Rent Control Revision fails.

6. The learned counsel for the petitioner prayed for some time to vacate the premises. We heard the learned counsel for the landlords also on this point. Having regard to the facts of this case, the petitioner is granted six months' time to vacate the premises, on condition that he files an unconditional undertaking in the form of an affidavit, undertaking to vacate the premises within six months from today before the executing court. This undertaking shall be filed within three weeks from today. The tenant shall also pay the rent payable from time to time till the room is vacated.

Subject to the above direction, the Rent Control Revision is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/